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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of JILAN C. and
PARKER T. MILLER.

JILAN C. MILLER,

Petitioner and Appellant,

v.

PARKER T. MILLER,

Respondent.

E046513

(Super.Ct.No. SBFSS92203)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Pacheco,
Judge. Affirmed.

Jilan C. Miller, in pro. per.; and Herb Fox for Petitioner and Appellant.

David Stringer for Respondent.

I. INTRODUCTION

Petitioner and appellant Jilan C. Miller appeals from a judgment of dissolution of marriage between her and respondent Parker T. Miller.¹ She contends the evidence was insufficient to support the trial court's finding that an oral modification changed a previous written agreement between her and Parker concerning ownership of real property. She also contends the trial court abused its discretion in the award of spousal maintenance and in awarding her only \$10,000 in offset credit towards her attorney fees. We find no error, and we affirm.

II. FACTS AND PROCEDURAL BACKGROUND

The parties were married on August 5, 2001. They separated on March 20, 2006, and Jilan filed an action for dissolution on March 23, 2006. In November 2006, a judgment of dissolution as to status only was entered. Issues concerning division of property and support were tried to the court.

At the time of the marriage, Parker owned four properties: the house where the couple lived in Colton (the Colton house), a house and a duplex in San Bernardino, and a 15-unit apartment complex (the Sepulveda apartments) in San Bernardino. Before the marriage, the parties had an agreement that they would acquire property together and would "try to prosper."

¹ Hereafter, we will refer to the parties by their first names for purposes of clarity and not out of disrespect. (*Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1, and cases cited therein.)

In late 2003, Parker sought to engage in an Internal Revenue Code section 1031 transaction to exchange his rental properties for a 52-unit complex in Arizona (the Phoenix apartments). After he had closed escrow for the sale of the Sepulveda apartments, he learned that he would need disclaimer deeds from Jilan to close the escrow for the purchase of the Phoenix apartments. The parties entered into a written agreement on December 8, 2003, in which Jilan agreed to disclaim any community property interest in the properties to be acquired in exchange for an express promise to be placed on the deeds after the exchange was complete.

The agreement provided: “[Jilan] shall sign Disclaimer Deed in favor of Parker . . . covering [listed real properties]. [¶] Parker . . . shall sign an inter-spousal deed conveying an undivided 50% interest, as husband and wife, to [Jilan] upon the close of the exchange escrow for the above-referenced properties. [¶] As mutual consideration of the parties signing the above deeds, the parties agree that the Disclaimer Deeds and Inter-Spousal Deeds for each property shall be signed and placed into escrow prior to the close of each escrow and shall record in such a manner as to not negate the intent of the tax-deferred exchange. It is the intent of the parties to have both parties, as husband and wife, on title to the above-referred Real Properties and escrow shall be instructed to prepare the deeds necessary to accomplish this vesting.”

Parker testified that he learned that adding Jilan’s name to the Phoenix apartments would destroy the validity of the exchange and result in substantial immediate tax consequences. He offered Jilan \$5,000 for each of the two disclaimer deeds in lieu of

adding her name to the title, but she refused. When he told her he was going to cancel the purchase of the Phoenix apartments, she offered to accept instead a one-half interest in the Colton house.

On December 10, 2003, Parker signed and delivered a deed conveying title to the Colton house into both parties' names jointly, and Jilan signed and delivered two disclaimer deeds.

Jilan testified she had never agreed to accept a half interest in the Colton house in lieu of having her name added to the Phoenix apartments. In a later declaration in support of her motion for new trial, she stated there had never been an oral agreement to modify the December 8, 2003, written agreement. She testified that Parker's deeding the Colton house to the parties jointly was merely the fulfillment of an oral promise made in consideration of marriage.

Jilan testified that during the marriage, she had worked with Parker in apartment management, but she never worked outside the home. She was not working at the time of trial. There were no children of the marriage, but Jilan has an adult daughter and a teenaged son from a previous relationship.

The standard of living during the marriage was based on a cash flow of \$10,103 per month derived from the selling, refinancing, and renting of Parker's separate real property. Parker testified that at the time of trial, his income was approximately \$2,500 per month from his rental property and approximately \$1,200 per month from social

security benefits. Parker was 65 years old at the time of trial, and he was facing open heart surgery to be followed by a recovery period of six months to a year.

Jilan was 51 years old at the time of dissolution. She came to the United States from Japan, and her native language is Chinese. She also speaks Japanese, but she is not fluent in English.

The trial court confirmed the Phoenix apartments as Parker's separate property, confirmed the Colton house as community property, and awarded each party a half interest as tenant in common in the Colton house. The trial court ordered Parker to pay spousal support in the amount of \$534 per month through July 2008. Finally, the trial court awarded Jilan \$10,000 in judgment-offset credit toward her attorney fees.

IV. DISCUSSION

A. Sufficiency of Evidence to Support the Trial Court's Finding of an Oral Modification to the Parties' December 8, 2003, Written Agreement

The trial court found the parties had entered into a written agreement on December 8, 2003, under which Jilan would provide disclaimers of any interest in the Arizona apartments for the purpose of closing escrow, and Parker would later execute the necessary documents to place her name on the title to that property. The trial court further found, however, that the agreement was orally modified to provide that Jilan would instead get joint title to the Colton house, and that oral agreement was fully executed. The trial court therefore confirmed the Arizona apartments as Parker's separate property.

1. Standard of Review

“When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. *If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.* [Citations.]” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) “Testimony may be rejected only when it is inherently improbable or incredible, i.e., “unbelievable *per se*,” physically impossible or “wholly unacceptable to reasonable minds.” [Citation.]” (*Kolender v. San Diego County Civil Service Com.* (2005) 132 Cal.App.4th 1150, 1155.)

2. Analysis

As Jilan concedes, the issue was a classic “he said — she said” dispute, and “[b]etween two markedly different versions of the story as to what transpired, . . . the trial court adopted [Parker’s] version.” Although, she contends that Parker’s version was “physically impossible, inherently implausible, and false,” the determination of credibility was solely for the trial court.

In her brief on appeal, Jilan contends that the 2005 copyright date on trial Exhibit D (a summary of vesting issues relating to Internal Revenue Code section 1031

transactions) impeached Parker's credibility because he testified he learned in 2003 of the tax consequences of adding Jilan's name to the title for the Phoenix apartments.

However, impeachment on the collateral issue of *when* Parker found out about potential tax consequences of putting Jilan's name on the deeds does not mean that the trial court was required to reject *all* of Parker's testimony. Rather, any discrepancies in his testimony "fall before the rule that a trier of fact 'is entitled to accept or reject all or any part of the testimony of any witness or to believe and accept a portion of the testimony of a particular witness and disbelieve the remainder of his testimony.' [Citation.]" (*Friddle v. Epstein* (1993) 16 Cal.App.4th 1649, 1659.) Thus, the trial court still could have found Parker's testimony credible as to the dispositive issues concerning the fully executed oral modification of the written contract, and substantial evidence supports the trial court's finding.

To the extent Jilan argues the trial court abused its discretion by failing to discuss each piece of evidence in the statement of decision, we reject that argument. Under Code of Civil Procedure section 632, the trial court must "issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial" Here, the trial court found that the oral modification of December 10, 2003, was fully executed. To support that finding, the trial court noted that Jilan's name was added to the title of the Colton house on the same date she signed the disclaimer deeds. The trial court therefore provided an adequate factual and legal basis for its decision.

B. Award of Spousal Maintenance

The trial court awarded Jilan spousal support in the amount of \$534 per month through July 2008. Jilan contends the award was an abuse of discretion because the court focused primarily on the short term of the marriage (four years seven months) and failed to consider other relevant issues under Family Code section 4320.

1. Additional Factual Background

In its proposed statement of decision, the trial court addressed spousal support as follows: “Addressing the [Family Code section] 4320 factors the court finds that this was a marriage of relatively brief duration. Petitioner is 51 years old; she is in good health; and she has no physical or emotional condition that limits her ability to work. However, she came to the United States fairly recently; she has only moderate English language skills; she did not assimilate into the work force during the marriage; and she is not working outside the home now. She does hold a college degree in her native country and she did attend and complete 6 months of English courses. There is no reason why she cannot work.

“Respondent is 65 years old, and he is in poor health. He will likely undergo open heart surgery in the near future followed by a lengthy recovery during which his physical activities will be limited. He intends to sell his apartments and reinvest his proceeds through another [Internal Revenue Code section] 1031 reinvestment plan in a less management intensive form. His income at this point is from Social Security and roughly \$2,500.00 per month in net rental income from his apartments.

“Based on the factors set forth in Family Code [section] 4320, the current order for support, \$534.00 per month, payable one-half on the first and fifteenth days of each month, shall continue through July 2008 and then terminate.”

2. Standard of Review

Trial courts have broad discretion in weighing the factors set forth in Family Code section 4320 and in determining the amount and duration of spousal support. (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 207.) For that reason, this court accords great deference to the trial court’s discretionary determination. (*Ibid.*) However, in exercising its discretion, the trial court must recognize and apply each relevant statutory factor in setting support, and failure to do so is reversible error. (*In re Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1297-1298.)

3. Analysis

Jilan contends that with respect to the amount of support, the trial court failed to consider the facts that her “English language skills are rudimentary,” and that she therefore “had few, if any, marketable skills” The record shows that although a translator was available at the trial, Jilan chose to listen to opening arguments in English rather than have the translator interpret word for word. Moreover, it appears she gave her own testimony in English, with the interpreter available for clarification if she did not understand something. Finally, Jilan had a degree in chemistry and could speak both Chinese and Japanese. The trial court did not abuse its discretion in finding that she was employable.

Jilan further contends her earning capacity was insufficient to maintain “even an approximation” of the parties’ standard of living during the marriage. The record showed the parties had a cash flow of about \$10,000 per month during the marriage, derived in large part from selling and refinancing of Parker’s separate property. However, such income was, by definition, unsustainable – each property could be sold only once, and none could be refinanced endlessly.

Jilan contends the parties’ income and expense declarations support her argument that the support award was inadequate. We have examined the trial exhibits that were transmitted to this court. Although Jilan’s Schedule of Assets and Debts was included in the record as Exhibit 7, it does not appear that Parker’s similar schedule was entered into evidence, and Jilan has failed to provide any citation to the record where such document or either party’s income and expense declaration might be found. We therefore deem her argument waived. (See *Casella v. SouthWest Dealer Services, Inc.* (2007) 157 Cal.App.4th 1127, 1146 (*Casella*).)

C. Award of Judgment-offset Credit

The trial court awarded Jilan a \$10,000 offset credit toward her attorney fees. Jilan contends the award was an abuse of discretion because the trial court failed to apply all the factors of Family Code section 2030.

To support her argument, Jilan again refers to the parties’ income and expense declarations and schedules of assets and debts. As noted, we have examined trial Exhibit 7, which is Jilan’s Schedule of Assets and Debts. However, she has failed to provide any

citation to the record where the other documents might be found. We therefore deem the argument waived. (See *Casella, supra*, 157 Cal.App.4th at p. 1146.)

IV. DISPOSITION

The judgment is affirmed. Costs shall be awarded to Respondent.

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HOLLENHORST

Acting P. J.

We concur:

RICHLI

J.

KING

J.